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Supreme Court, U.S.
FILED

APR 18 1987

JOSEPH F. SPANIOL, JR.
CLERK

No.

In The Supreme Court of the United States

October Term, 1986

MATTHEW SETERA, *Petitioner, Pro Se*

vs.

TEXAS A & M UNIVERSITY

George W. Kunze, Dean, Graduate College

Frank E. Vandiver, President, Texas A & M University

Jim Mattox, Attorney General, State of Texas

Defendants, Respondents

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

MATTHEW SETERA, *Petitioner, Pro Se*

9 Cumberland Street

Cumberland, Rhode Island 02864

13042

QUESTIONS PRESENTED FOR REVIEW

- 1) Whether the Federal District Court properly found that Petitioner's Suit is barred by the 11th Amendment to the US Constitution.
- 2) Whether there is diversity of citizenship pursuant to 28 USC 1332 (Plaintiff's Memo in Lower District Court)
- 3) Whether denial to amend complain in the Pursuit of Justice (FRCP #15) was proper. (Plaintiff's Motion to Amend)
- 4) Whether there is sufficiency of 11th Amendment Waiver. (See Authorities)
- 5) ✓ Whether opinions of the US Court of Appeals for the First Circuit are erroneous for they do not address the problem. (Appendix)
 - a) Whether Contract is valid and ongoing, as degree program not a terminable one as given in the above opinions.
 - b) Whether opinions of the Lower Courts have sufficiency of validity for overturning those opinions of this High Court and in conflict with them. (S CT Rule 17 a) (and Table of Authorities)
 - c) Why, if not, such ignorance of them in lower courts and in upper court grossly so?

TABLE OF CONTENTS

| | |
|------------------------------------------------------------------------------|-----|
| Questions Presented..... | I |
| Table of Authorities..... | III |
| Petition for Writ of Certiorari..... | 1 |
| Opinions Below..... | 1 |
| Jurisdiction..... | 2 |
| Jursidiction and Venue (Complaint)..... | 2 |
| Constitutional Provisions Involved..... | 2 |
| Statutory Provisions Involved..... | 2 |
| Statement of Case..... | 3 |
| Statement of Facts..... | 3 |
| Arguments and Authorities..... | 3 |
| Authorities..... | 4 |
| Summary of Argument..... | 6 |
| Reasons for Granting the Writ..... | 6 |
| Conclusion..... | 6 |
| Appendix..... | A |
| Appeal from the U.S. District Court for the District of Rhode Island..... | A1 |
| Per Curiam..... | A2 |
| Judgment..... | A3 |

TABLE OF AUTHORITIES

Court Cases

| | |
|--------------------------------------------------------------------|------|
| Casey V DePetrillo, 697 F. 2d. 22, 23 (1st Cir. 1983)..... | A2 |
| Jiménez V Almodovar, 650, F. 2d. 363, 370 (1st Cir. 1981)..... | 3,A2 |
| Procunier V Navarette, 434 US 555 p. 562..... | 5 |
| Scheuer V Rhodes 416 US 232-250 (Certiorari)..... | 5 |
| Scheuer V Rhodes 416 US 232, 40 L. ED. 2d 90 Cite as 94 S CT...4,5 | |
| Wood V Strickland 429 US 308 p. 321 (1974)..... | 5 |
| Zentgraf V Texas A & M University 492 R.S. 265 p. 272..... | 5 |

Statutes

| | |
|---------------------|---|
| 28 USC 1254 1)..... | 2 |
| 28 USC 1331 | 2 |
| 28 USC 1332 | 2 |
| 28 USC 1343 | 2 |
| 28 USC 1391 | 2 |
| 28 USC 2072 | 2 |
| 42 USC 1983 | 2 |

Other

| | |
|--------------------------------------------------------------------------------------------|---|
| Texas Revised Civil Statutes Ann. Art. 6252-26 ¶1 (a) (2) (Vernon 1972 & Supp. 1979) | 5 |
|--------------------------------------------------------------------------------------------|---|

Constitution

| | |
|----------------------------------------------|---|
| Article III Sec 2, U.S. Constitution..... | 2 |
| Article IV Sec 2, U.S. Constitution..... | 2 |
| Fourteenth Amendment, U.S. Constitution..... | 2 |

No. _____

In The Supreme Court of the United States

October Term, 1986

Matthew Setera, *Petitioner, Pro Se*

V

Texas A & M University

George W. Kunze, Dean, Graduate College

Frank E. Vandiver, President, Texas A & M University

Jim Mattox, Attorney General, State of Texas

Defendants, Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

The Petitioner, Matthew Setera, Pro Se respectfully petitions that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the First Circuit entered on 7 November 1986.

- Opinion Below

The Court of Appeals entered its Memorandum Decision affirming the Federal District Court's Memorandum, judgment and order, and which decision is given in the Appendix.

JURISDICTION

The Jurisdiction of this court is invoked under Title 28 USC 1254
1. (Writ of Certiorari)

Jurisdiction is also invoked under 28 USC 2072 formerly 48 STAT 1064 (to include the 7th Amendment right to jury trial, federal rules, statutes, constitution, matters* pertaining to the U.S. Supreme Court).

*Principle: Stare decisis (Opinions of this High Court remain decided).

Constitutional Provisions Involved

14th Amendment to the US Constitution (Property Rights, "Due Process",...) Articles: III Sec. 2, IV Sec. 2, of the US Constitution.

Article III Sec. 2, (the Judicial Power shall extend to all cases in law and equity arising under this Constitution,...to controversies* ...between a state and citizens of another state, between citizens of different states,...)

Article IV Sec. 2, (The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.)

Jursidiction and Venue (Complaint)

Jurisdiction is also invoked under those statutes found in complaint: 28 USC 1331 (Federal Question), 28 USC 1332 (Diversity of Citizenship: Amount in Controversy; Costs), 28 USC 1343 (Civil Rights and Elective Franchise), 28 USC 1391 (Venue generally), 42 USC 1983 (Civil Action for Deprivation of Rights).

*"The Great Controversy" (11th and 14th Amendments, U.S. Constitution).

Statement of the Case

This suit was brought by Petitioner on 30 January 1986, against Texas A & M University and various state officials in their capacity of common citizenship. Petitioner claims he was denied the opportunity to complete his graduate program which violated his civil rights under the fourteenth amendment and hence, his degree, a property right, was denied in violation of the due process clause of the U.S. Constitution. Petitioner seeks monetary relief.

On 24 March 1986, Case was dismissed by The Honorable Judge Bruce M. Selya, of the U.S. District Court in Providence, Rhode Island. Petitioner consequently filed his appeal to the U.S. Court of Appeals for the First Circuit which likewise affirmed District Court's Judgment, Memorandum, and Order.

Statement of Facts

Petitioner is a former graduate student enrolled at the Texas A & M University and alleges that a contract was breached between himself and the University as regards the University's catalogue, and Handbook on Rules and Regulations when he was denied permission to take exams, was forcefully mandated to take other courses not required, and other matters. (See Complaint).

Arguments and Authorities

In spite of the evidence on the following case histories favorable to Petitioner, containing opinions of this High Court, and presented to the U.S. Appeals Court, it was nonetheless, summarily ignored and their own substituted. The three judges en banc knew or should have known that the programs and degrees offered at Texas A & M University have not been discontinued or rescinded but are ongoing and therefore not a terminable one as in the *Jimenez V Almodovar*, 650, F. 2d. 363, 370 (1st Cir. 1981). Thus the District Court's Memo and Judgement and Order

was affirmed and the Appellate Court's opinions established in lieu of and ignoring the U.S. Supreme Court's opinions, and in violation of the Stare Decisis Principle.

Petitioner continues to affirm that by this denial of his attempt to implement FRCP #15, in the pursuit of justice, his "due process" within both lower courts as volatile and violated!

It is to be noted that evidence brought to the U.S. court of Appeals was not available to the Court of First Instance since motion to amend complaint and present further pleadings was denied as well as extension of time for presenting such evidence.

Finally, considering the justices' very own opinions: The totality of extenuating circumstances and not the face of complaint is the issue that matters. (See middle of *Scheuer V Rhodes* 216 U.S. 234 p. 237)

And Special Thanks to Justice Mr. Ferdinand Powell, monetary damages are not barred under circumstances such that plaintiff asserts, i.e., against state officials in their individual capacities. (See *Wood V Strickland*, 420 U.S. 308 p. 321 [1974] p. 322, & p. 329 [footnote² bottom of page]).

See also *Scheuer V Rhodes* 416 U.S. 232, 40 L. Ed. 2d 90 CITE as 94 S Ct 1683 (1974) p. 1683 Middle Left Column, p. 1683 Right Hand Column, 2. Federal Procedure, 4. States, & p. 1684 6. Federal Civil Procedure (Please Note: Appellant having submitted evidence, no opportunity was afforded.)

Authorities

The following authorities are necessary to have a fuller understanding of the following aforementioned arguments already presented and within the body of this petition for Writ for Certiorari to the U.S. Court of Appeals First Circuit.

Procunier V Navarette 434 US 555 p. 562

Scheuer V Rhodes 416 US 232-250 (Certiorari) p. 232 Held: 1., 2., p. 237.

(Opinions given here & related cases by Former Chief Justice Warren Burger).

Scheuer V Rhodes 416 US 232, 40 L. Ed. 2d 90 CITE as 94 S. CT 1683 (1974) 1. p. 1683 Middle Left Column: On Certiorari, 2. p. 1683 Right Hand Column 2. Federal Civil Procedure 4. States 6. Federal Civil Procedure p. 1684 7. Civil Rights

Wood V Strickland 420 US 308 p. 321 (1974) (Opinion of Justice Powell) p. 322 p. 329 Footnote² at bottom of page (Now Given: ²The opinion indicates that actual malice is presumed where one acts in ignorance of the law.)

The above evidence contains only excerpts but contain their own sufficiency. See Appellant's Brief for a fuller development.

Expressed waiver given in Zentgraf V Texas A & M University 492 R.S. 265 p. 272. See also Texas Revised Civil Statutes Ann. Art. 6252-26 §1 (a) (2) (Vernon 1972 & Supp. 1979)

(Expressed Waiver)

With regard to the individual defendants, the State of Texas is liable for all actual damages, court costs, and attorney's fees adjudged against officials or employees of any institution of the state where the damages are based on an act or omission by the person in the course and scope of his office or employment for the institute. (p. 11 in Appellant's Brief).

Summary of Argument

Petitioner alleges both courts below were erroneous because:

- 1) They failed to permit petitioner to amend his complaint to conform to evidence.
- 2) Both failed to fully consider the controversy between the 11th and 14th Amendments to the U.S. Constitution, and the latter blatantly so, in view of the evidence presented to it.
- 3) The Principle: Stare Decisis of this High Court was overturned by the Appellate Court and in gross violation of it.
- 4) Waiver arguments were summarily ignored in both Lower Courts.

Reasons for Granting the Writ

The review of Federal Rules of Civil Procedures (28 USC 2072), and the Principle: Stare Decisis, and "The Great Controversy" is proper to this High Court exclusively.

Conclusion

For the aforementioned reasons given briefly, Petitioner requests that the decisions of both Lower Courts be reversed, and request for Jurisdiction and reliefs sought be granted and affirmed, and case be remanded back to the Federal District Court in Providence, Rhode Island, for trial by jury (7th Amendment Right). (To include Amending Complaint.)

Respectfully Submitted,

Matthew Setera
Petitioner, Pro Se
9 Cumberland Street
Cumberland, Rhode Island 02864

APPENDIX A
(NOT FOR PUBLICATION)

United States Court of Appeals
For the First Circuit

No. 86-1450

MATTHEW SETERA,
Plaintiff, Appellant

v.

TEXAS A & M UNIVERSITY,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. Bruce M. Selya, U.S. District Judge]

Before

Coffin, Bownes, and Br  yer,
Circuit Judges.

Matthew Setera on brief, pro se.

Carla M. Crisford, Assistant Attorney General,
Jim Mattox, Attorney General of Texas, Mary F. Keller,
Executive Assistant Attorney General for Litigation, and
J. Patric K. Wiseman, Chief, State & County Affairs, on brief
for appellees.

November 7, 1986

Per Curiam. We have reviewed the record and the briefs on appeal. We affirm the district court judgment for the reasons stated in that court's memorandum and order of March 24, 1986. To the extent that the appellant is alleging a breach of contract claim, we add that we have held that a mere breach of a contractual right by a governmental instrumentality does not state a claim of a constitutional violation. Casey v. DePetrillo, 697 F.2d 22, 23 (1st Cir. 1983); Jimenez v. Almodovar, 650 F. 2d 363, 370 (1st Cir. 1981).

We reject the appellant's contention that the district court's failure to give him any further extension of time in which to file his objection to the defendants' motion to dismiss, beyond the twenty-day extension which the appellant asked for and received, was a violation of due process. We also find no error in the denial of the appellant's motion to amend judgment.

Affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 86-1450

MATTHEW SETERA,
Plaintiff, Appellant,

v.

TEXAS A & M UNIVERSITY,
Defendant, Appellee.

JUDGMENT

Entered: November 7, 1986

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Rhode Island.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano
Clerk

[cc: Mr. Setera and Ms. Crisford]

